AMENDED IN SENATE JUNE 28, 2002

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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL No. 2907

Introduced by Assembly Members Cohn and Thomson (Coauthors: Assembly Members Corbett, Correa, Goldberg, Pavley, Richman, and Steinberg)

February 25, 2002

An act to add Section 513 to the Business and Professions Code, and to amend Section 1386 of the Health and Safety Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2907, as amended, Cohn. Provider contracts.

The Knox-Keene Health Care Service Plan Act of 1975 provides for the regulation and licensing of health care service plans by the Department of Managed Health Care and makes the willful violation of any of its provisions a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Under existing law, a plan and a health insurer are prohibited from including certain provisions in a contract with a licensed health care practitioner regarding the practitioner's provision of care to an enrollee or insured.

This bill would prohibit provisions in a contract between a health care service plan or health insurer and a health care provider, as defined, that

would allow the plan or insurer to unilaterally change a material term of the contract without complying with specified requirements, that would require the provider to accept additional patients if, in the provider's judgment doing so would endanger patient care, subject to specified exceptions, and that would pertain to other specified aspects of the provider's practice. The bill would provide that a contract violating any of these prohibitions would be void, unlawful, and unenforceable and would make a plan's violation of these requirements grounds for disciplinary action. The bill would also require the Department of Insurance to report annually to the Legislature and the Governor complaints it receives concerning these requirements and would require the Department of Managed Health Care to report annually to the Legislature and the Governor information it receives from plans concerning their dispute resolution mechanism.

By creating new prohibitions applicable to health care service plans, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 513 is added to the Business and Professions Code, to read:

513. (a) This section shall be known and may be cited as the Health Care Providers' Bill of Rights.

(b) The purpose of this section is to ensure that health care service plans and health insurers do not enter into contracts that interfere with any ethical responsibility or legal right of health care providers.

(c) No contract between a health care service plan or health insurer and a health care provider for the provision of health services to a plan enrollee or an insured shall contain any of the following terms:

(1) Authority for the health care service plan or health insurer to change a material term of the contract, unless the contract requires at least 45 days' notice to the health care provider of the change~~,~~ and the provision has first been negotiated and agreed to by the provider and the plan or health insurer. If a contract between a provider and a plan or health insurer provides benefits to enrollees, subscribers, or insureds through a preferred provider arrangement, the contract may contain provisions permitting a material change to the contract by the plan or health insurer if the plan or health insurer provides at least 45 days' notice to the provider of the change~~,~~ and the provider has the right to terminate the contract prior to the implementation of the change.

(2) A provision that requires a health care provider to accept additional patients if, in the judgment of the provider, accepting additional patients would endanger patients' access to or continuity of care. ~~A provider may not refuse to accept Medi-Cal or Healthy Family beneficiaries enrolled with the health care service plan or health insurer if the provider is continuing to accept other enrollees or insureds under the contract with the plan or insurer, and the provider has contracted to provide health care services to those beneficiaries.~~

(3) A requirement to comply with quality improvement or utilization management programs or procedures of a health care service plan or a health insurer, unless the requirement is fully disclosed to the health care provider at least 30 days prior to the provider executing the contract.

(4) A provision that waives or is inconsistent with any provision of the Knox-Keene Health Care Service Plan Act (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or the Insurance Code.

(5) A requirement to permit access to patient information in violation of federal or state laws concerning the confidentiality of patient information.

(d) Any contract that violates subdivision (c) shall be void, unlawful, and unenforceable.

(e) The Department of Managed Health Care shall compile the information submitted by health care service plans pursuant to subdivision (h) of Section 1367 of the Health and Safety Code into a report and submit the report to the Governor and the Legislature by March 15 of each calendar year.

(f) The Department of Insurance shall annually compile all provider complaints if receives under this section and report to the Legislature and the Governor the number and nature of those complaints by March 15 of each calendar year.

(g) Nothing in this section shall be construed or applied as setting the rate of payment to be included in contracts between health care service plans or health insurers and health care providers. Nothing in this section shall require a provider to continue a relationship with a patient who fails to comply with the provider's posted office policies or who behaves in a manner that is abusive, offensive, or dangerous to patients, office staff, or health care personnel, if the patient and the patient's health care service plan or health insurer are given at least 30 days' notice of the termination for those reasons.

(h) For purposes of this section the following definitions apply:

(1) ''Health care provider'' means a person who is described in subdivision (f) of Section 900 and who either contracts with or is considering a contract to provide health care services to health care service plan enrollees or insureds.

(2) ''Health care service plan'' means any person licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(3) ''Health insurer'' means any admitted insurer writing health insurance, as defined in Section 106 of the Insurance Code.

(4) ''Material'' means a proposed provision in a contract that is substantive and would affect the decision of an individual or entity to accept the terms of the contract.

SEC. 2. Section 1386 of the Health and Safety Code is amended to read:

1386. (a) The director may, after appropriate notice and opportunity for a hearing, by order suspend or revoke any license issued under this chapter to a health care service plan or assess administrative penalties if the director determines that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the director:

(1) The plan is operating at variance with the basic organizational documents as filed pursuant to Section 1351 or

1352, or with its published plan, or in any manner contrary to that described in, and reasonably inferred from, the plan as contained in its application for licensure and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the director.

(2) The plan has issued, or permits others to use, evidence of coverage or uses a schedule of charges for health care services that do not comply with those published in the latest evidence of coverage found unobjectionable by the director.

(3) The plan does not provide basic health care services to its enrollees and subscribers as set forth in the evidence of coverage. This subdivision shall not apply to specialized health care service plan contracts.

(4) The plan is no longer able to meet the standards set forth in Article 5 (commencing with Section 1367).

(5) The continued operation of the plan will constitute a substantial risk to its subscribers and enrollees.

(6) The plan has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the director pursuant to this chapter, or any order issued by the director pursuant to this chapter.

(7) The plan has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration, or exemption issued pursuant to the Business and Professions Code~~,~~ or this code that would constitute grounds for discipline against the certificate, license, permit, registration, or exemption.

(9) The plan has aided or abetted or permitted the commission of any illegal act.

(10) The engagement of a person as an officer, director, employee, associate, or provider of the plan contrary to the provisions of an order issued by the director pursuant to subdivision (c) of this section or subdivision (d) of Section 1388.

(11) The engagement of a person as a solicitor or supervisor of solicitation contrary to the provisions of an order issued by the director pursuant to Section 1388.

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company , or affiliate, has been convicted of or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this chapter. The director may revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(13) The plan violates Section 510, 513, 2056, or 2056.1 of the Business and Professions Code.

(14) The plan has been subject to a final disciplinary action taken by this state, another state, an agency of the federal government, or another country, for any act or omission that would constitute a violation of this chapter.

(15) The plan violates the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(c) (1) The director may prohibit any person from serving as an officer, director, employee, associate, or provider of any plan or solicitor firm, or of any management company of any plan, or as a solicitor, if either of the following applies:

(A) The prohibition is in the public interest and the person has committed, caused, participated in, or had knowledge of a violation of this chapter by a plan, management company, or solicitor firm.

(B) The person was an officer, director, employee, associate, or provider of a plan or of a management company or solicitor firm of any plan whose license has been suspended or revoked pursuant to this section and the person had knowledge of, or participated in, any of the prohibited acts for which the license was suspended or revoked.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a plan under this section or may constitute a separate proceeding, subject in either case to subdivision (d).

(d) A proceeding under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard

to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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